

CHAPTER 3
**Taxes on Motor Vehicles,
Stamp Duty and Registration Fees and
State Excise**

3.1 Results of audit

Test check of records of departmental offices conducted during the year 2001-2002 revealed short realisation or loss of revenue amounting to Rs 44.02 crore in 3257 cases as stated below:

Sr. No.	Category	No. of cases	Amount (Rupees in crore)
STATE EXCISE			
1.	Short recovery of licence /privilege fees	51	0.19
2.	Short/non-recovery of supervision charges/bonus	73	0.04
3.	Miscellaneous	80	19.55
	Total	204	19.78
TAXES ON MOTOR VEHICLES			
4.	Non-levy/short levy of tax due to incorrect application of rates	1883	11.13
5.	Short levy of tax due to incorrect exemption/classification	901	0.99
6.	Other irregularities	2	0.54
	Total	2786	12.66
STAMP DUTY & REGISTRATION FEES			
7.	Non-levy of stamp duty on instruments executed by co-operative societies	5	0.02
8.	Incorrect exemption of stamp duty and registration fees	36	0.91
9.	Short levy due to mis-classification	57	7.06
10.	Short levy due to under valuation of property	52	0.88
11.	Other irregularities	117	2.71
	Total	267	11.58
Grand Total		3257	44.02

During the course of the year 2001-2002, the department accepted under-assessments *etc.*, in 3672 cases involving Rs 1.67 crore and recovered Rs 1.65 crore. Of this, 1527 cases involving Rs 53.58 lakh had been pointed out during 2001-2002 and the rest in earlier years.

A few illustrative cases noticed during 2001-2002 and in earlier years involving financial effect of Rs 28.98 crore are given in the following paragraph:

TAXES ON MOTOR VEHICLES

3.2 Non/short recovery of motor vehicle tax

(i) Under the Bombay Motor Vehicles Tax Act, 1958 and the Rules made thereunder, tax at the prescribed rate is leviable on all vehicles used or kept for use in the State. The Act further provides that tax leviable shall be paid in advance by the registered owner of the vehicle. Interest at the rate of 2 *per cent* of the amount of tax for each month or part thereof is payable in each case of default in payment of tax dues.

A test check of records in 12 offices (between August 1998 and September 2001) in audit revealed that in respect of 414 vehicles, tax amounting to Rs 71.60 lakh was neither paid by the vehicle owners nor any demand notices were issued by the department for various periods falling between April 1996 and December 2001 as detailed in the following table.

Sr. No.	Location of the office	No. of vehicles	Period of default Between	Amount (Rupees in lakh)
1.	Jalna	34	1 December 1996 and 31 October 2000	5.37
2.	Kolhapur	48	1 January 1999 and 31 December 2001	2.50
3.	Latur	6	1 March 2000 and 31 December 2001	0.68
4.	Mumbai (Central)	31	1 April 1996 and 30 September 1998	8.78
5.	Mumbai (East)	36	1 July 1996 and 31 August 1999	4.47
6.	Mumbai (West)	23	1 April 1997 and 30 September 2001	9.72
7.	Nanded	36	1 March 1998 and 31 May 2001	8.26
8.	Parbhani	73	1 July 1998 and 31 May 2001	8.62

Sr. No.	Location of the office	No. of vehicles	Period of default Between	Amount (Rupees in lakh)
9.	Pen	42	1 May 1996 and 30 November 2001	10.82
10.	Pimpri-Chinchwad	26	1 December 1996 and 28 February 2001	2.14
11.	Ratnagiri	39	1 July 1998 and 30 September 2001	5.12
12.	Solapur	20	1 April 1996 and 31 December 2000	5.12
TOTAL		127		71.60

On being pointed out (between August 1998 and September 2001) the department intimated (between September 1998 and September 2002) recoveries amounting to Rs 25.07 lakh (including interest of Rs 2.37 lakh) in respect of 216 vehicles.

The matter was reported to Government in April 2002; their reply has not been received (December 2002).

(ii) Under the Bombay Motor Vehicles Tax Act, 1958 and the Rules made thereunder, motor vehicles registered in Mumbai were liable to pay motor vehicles tax at $\frac{2}{3}$ rd the prescribed rate. Consequent upon abolition of wheel tax levied and recovered by the Mumbai Municipal Corporation with effect from 1 April 1999, $\frac{1}{3}$ rd exemption of motor vehicles tax extended to motor vehicles registered in Mumbai stood withdrawn and tax was payable at full rate.

A test check of records in the three Regional Transport Offices at Mumbai revealed (between September 2000 and May 2001) that in respect of 105 vehicles, the department continued to recover motor vehicles tax at the concessional rate instead of at the full rate. This resulted in short recovery of tax amounting to Rs 15.85 lakh for the periods falling between 1 April 1999 and 30 June 2001.

On this being pointed out (between September 2000 and May 2001) the department recovered Rs 14.66 lakh (including interest of Rs 3.83 lakh) in respect of 71 vehicles (between December 2000 and January 2002). Report on action taken in the remaining cases has not been received (December 2002).

The matter was reported to Government in May 2002; their reply has not been received (December 2002).

3.3 Loss of revenue

Section 177 of the Motor Vehicles Act, 1988 provides that whoever (the traffic offenders) contravenes any provision of the said Act or of any rules made thereunder shall, if no penalty is provided for the offence, be punishable for the first offence with fine of Rs 100 and for any second or subsequent offence with fine of Rs 300. Further, the cases not preferred to Court/pending, become time-barred under Section 468 of the Criminal Procedure Code after the expiry of six months if the offence is punishable with fine only.

A test check of records of the Joint Commissioner of Police (Traffic) Mumbai and Deputy Commissioner of Police (Traffic) at Nagpur, Pune and Thane revealed that 2278667¹³ cases against traffic offenders were registered during 1996-2001. However, these cases were not preferred to Court in time and became time-barred under the Limitation Act, depriving the Government of minimum revenue of Rs 22.79 crore worked out at the minimum rate of Rs 100 per case.

On this being pointed out in audit (January to May 2002), the department accepted the omission.

The matter was reported to Government in July 2002; their reply has not been received (December 2002).

STAMPS AND REGISTRATION FEES

3.4 Short levy of stamp duty due to misclassification

According to Explanation 1 below Article 25 of Schedule 1 to the Bombay Stamp Act, 1958 and Section 2(g) of the Act, every instrument by which possession of immovable property is transferred or agreed to be transferred to a person, becomes a conveyance. Stamp duty on conveyance deed relating to property situated within the limits of Municipal Corporation of Greater Mumbai was leviable on the market value of the property at the prescribed rates.

(i) In Sub-Registry, 'S' series, Mumbai, an instrument registered in March 1998 for a property, the rights of which had already been transferred by the vendor to the vendee in May 1995 was incorrectly charged stamp duty at the rates applicable to the 'Development Agreement' instead of treating as a 'Deed of Conveyance'. The market value of the property was Rs 20.55 crore. Consequently, a duty of Rs 2.04 crore was leviable. This resulted in non-levy of stamp duty to the extent.

On this being pointed out by Audit (February 2000), the Inspector General of Registration accepted (July 2001) the audit observations but levied the stamp

¹³ Mumbai (1026363), Nagpur (50640), Pune (1164878) and Thane (36786).

duty of Rs 16.65 lakh on apparent value of Rs 1.85 crore as certified by the Income Tax Department. The levy of duty on apparent value instead of market value was incorrect as the department should have collected the duty on realistic market value of the property.

The matter was reported to the Government in February 2000; their reply has not been received (December 2002).

(ii) In the office of the Sub-Registrar, Andheri in July 1998, it was seen that two instruments of conveyance were registered in October 1996 by levying stamp duty on the consideration of Rs 5.60 crore shown therein. The Sub-Registrar neither verified the market value with reference to ready reckoner, nor the case was referred to the Collector of the district for determination of the true market value of the property. The value shown in the instruments was even less as compared to the value certified by the appropriate authority under the provisions of the Income Tax Act. Not-considering even the apparent value of Rs 6.50 crore for the purpose of levy of stamp duty, resulted in short levy of stamp duty to the extent of Rs 0.09 crore on these two documents.

On this being pointed out in audit (July 1998), the Inspector General of Registration, accepted (January 2001) the omissions and stated that the short levied amount of Rs 0.09 crore would be recovered.

The matter was reported to the Government in June 2002; their reply has not been received (December 2002).

3.5 Evasion of stamp duty due to non-registration of instrument

Every instrument of transfer of immovable property is required *inter alia* to be registered compulsorily under Section 17 of the Registration Act, 1908 and stamp duty and registration fee on such document is leviable under Schedule I of the Bombay Stamp Act, 1958.

The City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) leased out land measuring 10000.01 square meters in Vashi, Navi Mumbai (May 1989 and October 1990) to the Bombay Oil Seeds and Oil Exchange Ltd. (the confirming party) for 60 years. The confirming party constructed a building on the said land and later in 1995 agreed to allot the ground floor of the said building admeasuring 8006 sq.ft. at a consideration of Rs 1.94 crore to Videocon Leasing and Industrial Finance Ltd. (the vendor). The vendor paid full consideration of the property and also paid Rs 0.12 crore to the confirming party towards stamp duty and occupied the premises from 31 July 1995. However, neither the instrument was registered in the office of the concerned Sub-Registrar nor the amount of duty paid by the vendor to the confirming party was deposited into treasury immediately. The confirming party retained the amount of duty with them. Subsequently, the aforesaid premises were transferred by the vendor to Union Bank of India (purchaser) in

July 1998 at a consideration of Rs 2.73 crore and the instrument was registered in January 1999 in Sub-Registrar 'R' series, Mumbai by paying stamp duty and registration fees of Rs 0.28 crore. Thus, due to non-registration of the document of conveyance there was evasion of stamp duty and registration fees of Rs 0.12 crore.

On this being pointed out (January 2001) the Inspector General of Registration stated (September 2001) that the previous document whether registered or not was an independent transaction and has no relevance to the subsequent transaction. The reply of the Inspector General of Registration is not acceptable, as the stamp duty collected by the seller from the purchaser in 1995 was not remitted to the treasury under the provision of Section 63 (A) (1) of the Bombay Stamp Act. Moreover, for contravention of the provision the seller is liable to criminal action under clause 2 of the section *ibid*. Though, this fact was noticed by the Sub-Registrar while registering the subsequent document in July 1998, appropriate action was not taken by him.

The matter was reported to Government in July 2001; their reply has not been received (December 2002).

3.6 Short levy of stamp duty due to under-valuation of property

Stamp duty on instruments of conveyance and gift of immovable property has to be levied under Articles 25 and 34 of Schedule I to the Bombay Stamp Act, 1958. The registering officer to whom the instrument is produced for registration is required to verify the true market value of the property with reference to the ready reckoner (annual statement of rate of land and buildings prepared and supplied every year by the Chief Controlling Revenue Authority) and in case he finds that the market value stated in the instrument is less than the minimum value prescribed in the statement, he shall refer the same to the Collector of the district for determination of true market value of the property.

In the office of the Sub-Registrar, "S" Series, Mumbai, five instruments of conveyance and one gift deed were executed between January 1999 and March 1999. The Sub-Registrar levied stamp duty of Rs 1.70 lakh on consideration of Rs 0.27 crore set forth in the instruments while the true market value of the property with reference to the ready reckoner worked out to Rs 7.91 crore. Due to under-valuation of property in the documents, stamp duty and registration fees were levied short by Rs 0.77 crore and Rs 0.55 lakh respectively.

On this being pointed out in audit (January 2001) the Inspector General of Registration accepted (September 2001) the omission and agreed to recover the amount short levied. Final action by the department for recovery was awaited (December 2002).

The matter was reported to Government in July 2001; their reply has not been received (December 2002).

3.7 Irregular exemption of stamp duty and registration fees

According to Section 3(i) of the Bombay Stamp Act, 1958 the exemption from levy of stamp duty is available only on those instruments, which have been executed by or on behalf of or in favour of the Government.

In Sub-Registrar, Mangalvedha, Solapur District, 2 instruments of sale deed and one instrument of gift deed for land measuring 9044 square meters for commercial purpose of Nagar Parishad, Mangalvedha, executed on twenty rupee stamp paper each in February 1999 for total consideration of Rs 1.61 crore conveying right, title and interest were exempted from payment of stamp duty and registration fees. This resulted in non-realisation of stamp duty and registration fees amounting to Rs 7.66 lakh.

On this being pointed out (October 2001) the Inspector General of Registration, accepted (March 2002) the omission and directed the Joint District Registrar to initiate action for recovery of the amount.

The matter was reported to Government in January 2002; their reply has not been received (December 2002).

3.8 Short levy of stamp duty due to incorrect classification of conveyances as agreements for development

Article 5(g-a) read with Article 48(g) to the Bombay Stamp Act, 1958 provides for levy of stamp duty at the rate of Rs 5 for every Rs 500 or part thereof of the market value of the property in regard to agreement relating to giving authority or power to a promoter or a developer by whatever name called for construction or development of or sale or transfer of any immovable property. However, when such power is given for consideration and authorising to sell an immovable property, the duty is leviable on the conveyance.

In the offices of three Sub-Registrars (Kurla, Kalyan and Haveli), 15 instruments were executed between January 1998 and December 2000 as agreements for development though a consideration of Rs 17.53 crore was agreed to be paid by the developers to the owners of land, either in instalment or in lumpsum and payment was also made in advance/at the time of execution of deeds. These documents had to be charged with stamp duty at the rates applicable to conveyance deed but they were incorrectly charged with stamp duty applicable to agreements for development under Article 5(g) (a), even though the right, title and interest were transferred in the subject matter of property. This resulted in short levy of stamp duty amounting to Rs 2.21 crore.

On this being pointed out (between February 2000 and October 2001) the Sub-Registrar, Haveli-IV accepted the short levy in February 2000 and agreed to take action as per orders of higher authorities. However, no recovery had been

effected (December 2002). The Sub-Registrars, Kurla and Kalyan-I, however, stated that these documents were charged with stamp duty under Article 5(g)(a) since these documents were named as “agreement for development”. The reply given by the Sub-Registrars was not tenable in view of the fact that the subject matter lands/properties were actually transferred by owner to developers for consideration and again by the developers to allottees of flats which required levy of stamp duty at both the times under Article 25.

The matter was reported to the Inspector General of Registration, Maharashtra State, Pune/Government between June 2000 and January 2002; their replies had not been received (December 2002).